

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

NICK SPANGLER, BRUNO TRIGO,)
HAYDEN WILLIAMS, and DANIEL)
SALINAS, Individually and On Behalf) Civil Action No.: 3:19-cv-00136
of Others Similarly Situated,)
)
Plaintiffs,)
v.)
)
FRESH INVESTMENTS, LLC and)
FRESH INVESTMENTS VCU 1740, LLC,)
D/B/A Jimmy John's Gourmet Sandwiches,)
)
Defendants.)
)

COMPLAINT

Plaintiffs Nick Spangler, Bruno Trigo, Hayden Williams and Daniel Salinas, individually and on behalf of all others similarly situated, by counsel, allege the following claims against the Defendants Fresh Investments, LLC and Fresh Investments VCU 1740, LLC (collectively referred to herein as "Fresh Investments"), who conduct business as Jimmy John's Gourmet Sandwiches, pursuant to the Fair Labor Standards Act ("FLSA"), 29 U.S.C. §201, *et seq.*

NATURE OF CLAIMS

1. This is an action for violations of the minimum wage provisions of the FLSA. Plaintiffs are current and/or former employees of the Defendants and worked for the Defendants at their Jimmy John's Gourmet Sandwiches shop located in Richmond, Virginia. Plaintiffs worked for Defendants both as untipped "In Shop" workers and as tipped "Drivers." Plaintiffs bring this action as a collective action pursuant to 29 U.S.C. § 216(b) on behalf of all employees of the Defendants who worked at the Jimmy John's Gourmet Sandwiches shop located at 520 West Franklin Street, Richmond Virginia, and were paid an hourly rate of less than the minimum wage. Defendants violated the minimum wage provisions of the FLSA because they paid Plaintiffs a

straight hourly rate less than the required minimum wage for all hours worked regardless of whether they were working as tipped employees or non-tipped employees and attempted to apply the “tip credit” to all hours worked rather than merely those hours for which the Plaintiffs worked in a tipped position.

2. Plaintiffs bring claims under the FLSA as a collective action pursuant to 29 U.S.C. § 216(b) on behalf of themselves and other similarly situated employees who suffered damages as a result of Defendants’ practices that violated the FLSA that were common to them.

JURISDICTION AND VENUE

3. This Court has jurisdiction over this matter pursuant to 29 U.S.C. §216(b) and 28 U.S.C. §§1331, 1367, 2201 and 2202.

4. Venue is proper in this District pursuant to 28 U.S.C. §1391(b), as each of the Defendants is a resident of Richmond, Virginia, and a substantial part of the events or omissions giving rise to the claims occurred in this District.

5. Defendant Fresh Investments, LLC is subject to personal jurisdiction in the Commonwealth of Virginia, in that it is organized under the laws of Virginia, transacts business in Virginia, maintains its principal place of business in Virginia, contracts to supply services or things in Virginia, and has an interest in real property in Virginia.

6. Defendant Fresh Investments VCU 1740, LLC is subject to personal jurisdiction in the Commonwealth of Virginia, in that it is organized under the laws of Virginia, transacts business in Virginia, maintains its principal place of business in Virginia, contracts to supply services or things in Virginia, and has an interest in real property in Virginia.

PARTIES

7. Plaintiff Nick Spangler is a resident of Richmond, Virginia. Mr. Spangler worked for Defendants at the Jimmy John’s Gourmet Sandwiches shop located at 520 West Franklin Street,

Richmond, Virginia from approximately August 2012 through May 2015, and again beginning approximately January 4, 2018 through the present, for which he was paid an hourly rate of \$6.25 for all hours worked.

8. Plaintiff Bruno Trigo is a resident of Richmond, Virginia. Mr. Trigo worked for Defendants at the Jimmy John's Gourmet Sandwiches shop located at 520 West Franklin Street, Richmond, Virginia from approximately September 2015 through September 2016, for which he was paid an hourly rate of \$5.25 for all hours worked, and again from September 2018 through the present.

9. Plaintiff Hayden Williams is a resident of Richmond, Virginia. Mr. Williams worked for Defendants at the Jimmy John's Gourmet Sandwiches shop located at 520 West Franklin Street, Richmond, Virginia from approximately January 2017 through June 2017 and again from approximately March 2018 through January 2019, for which he was initially paid an hourly rate of \$5.50 for all hours worked.

10. Plaintiff Daniel Salinas is a resident of Richmond, Virginia. Mr. Salinas worked for Defendants at the Jimmy John's Gourmet Sandwiches shop located at 520 West Franklin Street, Richmond, Virginia from approximately July 24, 2018 through December 13, 2018, for which he was paid \$6.25 per hour for all hours worked.

11. Defendant Fresh Investments, LLC is a for profit corporation organized and existing under the laws of Virginia with a principal place of business located at 7825 Lakeforest Drive, North Chesterfield, Virginia.

12. Defendant Fresh Investments VCU 1740, LLC is a for profit corporation organized and existing under the laws of Virginia with a principal place of business located at 7825 Lakeforest Drive, North Chesterfield, Virginia.

FACTS AND ALLEGATIONS

13. At all times relevant herein, Defendants owned and operated the Jimmy John's Gourmet Sandwiches shop located at 520 West Franklin Street, Richmond Virginia.

14. Plaintiffs and similarly situated employees worked for the Defendants in two different roles: (a) "In Shop" workers and (b) "Drivers." When working as "In Shop" workers, Plaintiffs and similarly situated employees performed non-tipped work such as making sandwiches, taking orders from customers, operating the cash register, and other duties for which they received no tips. When working as "Drivers," Plaintiffs and similarly situated employees delivered sandwiches to customers, for which they typically received tips.

15. Defendants paid Plaintiffs and similarly situated employees a straight hourly rate of less than the minimum wage for all hours worked regardless of whether they were performing the duties of a tipped "Driver" or a non-tipped "In House" worker.

16. Defendant applied a "tip credit" toward its requirement to pay the Plaintiffs and similarly situated employees the minimum wage of \$7.25 per hour based on the tips received by Plaintiffs from the customers while performing tipped work as a "Driver." Defendant applied this "tip credit" for all time worked by the Plaintiffs and similarly situated employees, including the time performing work in untipped positions, and not merely for the hours for which they worked in the tipped position of "Driver."

17. Plaintiffs and similarly situated employees were not exempt from the minimum wage provisions of the FLSA.

FOR A FIRST CAUSE OF ACTION Failure to Pay Minimum Wages, 29 U.S.C. §206 Against all Defendants

18. Plaintiffs re-allege and incorporate by reference all preceding paragraphs as if specifically set forth herein.

19. The FLSA mandates that employers compensate non-exempt employees at a minimum hourly rate of \$7.25.

20. Pursuant to 29 U.S.C. §203(m), an employer may apply a credit, up to a maximum amount of \$5.12 per hour, from tips received by a tipped employee toward the employer's minimum wage obligation under certain limited conditions.

21. Defendants paid Plaintiffs and similarly situated employees an hourly rate below the lawful minimum wage for all hours worked and applied a tip credit toward Defendants' minimum wage obligation for all hours worked regardless of whether the Plaintiffs and similarly situated employees were working in a tipped or non-tipped position.

22. Defendants' compensation policies and practices toward Plaintiffs and similarly situated employees violated the minimum wage provisions of the FLSA in several particulars, including:

- a. Defendants failed to pay employees an amount sufficient to meet Defendants' minimum wage obligation; and
- b. Defendants failed to provide notice to Plaintiffs of the FLSA's requirements for a valid tip credit.

23. At all times relevant herein, Defendants have been engaged in interstate commerce within the meaning of 29 U.S.C. §§203(r) and (s).

24. At all times relevant herein, each of the Defendants was an employer within the meaning of 29 U.S.C. §203.

25. At all times relevant herein, Plaintiffs and similarly situated employees were engaged in interstate commerce.

26. At all times relevant herein, Defendants owned and operated an enterprise engaged in interstate commerce or in the production of interstate commerce as defined by the FLSA, 29 U.S.C. §§ 203(r) and 203(s).

27. On information and belief, at all times relevant herein, the annual gross sales volume of each of the Defendants' business was in excess of \$500,000.00.

28. Defendants' violations of the FLSA were willful.

29. As a result of Defendants' violations of the minimum wage provisions of the FLSA, Plaintiffs and similarly situated employees are entitled to recover their damages caused by the violations, liquidated damages in an equal amount, and their attorneys' fees and costs incurred in bringing this action.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs Nick Spangler, Bruno Trigo, Hayden Williams and Daniel Salinas, individually and on behalf of similarly situated employees who join this action, demand:

- a. Certification of this action as a collective action pursuant to 29 U.S.C. §216(b);
- b. Judgment against Defendants in an amount equal to Plaintiffs' unpaid minimum wages at the applicable hourly rate of \$7.25;
- c. Liquidated damages in an amount equal to Plaintiffs' damages;
- d. Plaintiffs' attorneys' fees and costs; and
- e. All such further relief as the Court deems just and equitable.

JURY DEMAND

Plaintiffs Nick Spangler, Bruno Trigo, Hayden Williams and Daniel Salinas demand a trial by jury.

Respectfully submitted,

/s/ William C. Tucker
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